

FEB 19 1941

BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

Regional Conference of ABA

Law Library News

Junior Barristers Annual Report

Law Lecture Course

The Argument of An Appeal

Report of Committee on
Municipal Court Reporters Examination

A DINNER IN HONOR OF PRESIDENT JACOB M. LASHLY,
A. B. A., WILL BE HELD AT BILTMORE HOTEL, FEB. 20,
UNDER THE AUSPICES OF STATE BAR OF CALIFORNIA
AND LOS ANGELES BAR ASSOCIATION AS A COURTESY
TO OUT OF TOWN LAWYERS WHO ATTEND THE CON-
FERENCE OF STATE AND LOCAL BAR EXECUTIVES. FOR
DETAILS SEE ARTICLE IN THIS ISSUE.

Vol. 16

FEBRUARY, 1941

No. 6

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VOL. 16

FEBRUARY, 1941

No. 6

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RESOLUTION OF BOARD OF TRUSTEES LOS ANGELES BAR ASSOCIATION

WHEREAS, prior to each primary election of Judges for Superior Court and Municipal Court, members of this Association are directly or indirectly solicited for contributions to the campaign funds of candidates for election or re-election to judicial offices; and

WHEREAS, the giving of contributions constitutes in effect an endorsement of the person for whom such funds are solicited, but the refusal of such contributions is frequently embarrassing when other members of the Association are making similar contributions; and

WHEREAS, it is the desire of the Association that each plebiscite conducted by it among the members of the Bench and Bar of Los Angeles County shall reflect the unbiased and uninfluenced opinion of the members of the Bench and Bar in Los Angeles County as to the judicial qualities of the various candidates considered in such plebiscite, and for that reason this Association has heretofore requested its members not to endorse candidates for judicial office prior to such plebiscite;

NOW THEREFORE, BE IT RESOLVED: That members of this Association be, and they are hereby requested to refrain from making contributions to the campaign fund of any candidate for judicial office at primary elections, together with all other endorsements, until after the results of the plebiscite of the Los Angeles Bar Association as to such office have been published.

Adopted April 3, 1940.

REGIONAL CONFERENCE OF AMERICAN BAR ASSOCIATION AT LOS ANGELES

FOLLOWING a program inaugurated recently, the American Bar Association will hold its first regional conference on the West Coast at Los Angeles on February 20. The conference is comprised of state and local bar association executives and members of the House of Delegates from three states—California, Arizona and Nevada. Headquarters for the conference are the Biltmore Hotel.

Regional conferences of the American Bar Association are held between the annual conventions, are really an intermediate function to keep the attorneys of this country up-to-date on their own problems and problems in other fields where their services are necessary.

While the conference is primarily limited to state and local bar association executives, members of the bar at large will have a fine opportunity to get some first hand information at the reception and dinner following the conference. This is scheduled for six-thirty on the evening of February 20, at the Biltmore Hotel, members of the bar at large being particularly invited. The affair will be under the auspices of the Los Angeles Bar Association and will honor President Jacob M. Lashly of St. Louis, President of the American Bar Association, who will be here especially for the occasion. He will address the meeting on the subject "American Bar Association; Its Opportunities" and is known as an able and forceful speaker. The reception and dinner will be informal and guests are cordially invited.

PROGRAM OF CONFERENCE FEATURES NATIONAL DEFENSE PROBLEMS AND JUDICIAL ADMINISTRATION

Mr. Lashly is scheduled to address the Regional Conference in the afternoon on the subject "Responsibility of the Bar in a Changing World". U. S. Circuit Judge John J. Parker is making the trip all the way from North Carolina to attend the conference and will discuss the subject "Judicial Administration" at luncheon. Internationally known as an able and scholarly jurist, Judge Parker is an authority on the subject and his remarks are anticipated with keen interest.

Mr. William C. Mathes of Los Angeles, who is a member of the Special Committee of the American Bar Association on National Defense, will address the morning session of the conference on the topic "Lawyers in Defense of Democracy". Mr. Mathes has already spent a great deal of time working on this particular committee and will have some concrete things to say on the subject.

The complete program of the conference, which is conducted by the section of Bar Association Activities of the American Bar Association, is as follows:

PRESIDING OFFICERS

Burt J. Thompson, Forest City, Iowa, Chairman
Section Bar Organization Activities

Harry J. McClean, Los Angeles, California
Member of Section Council

Hon. Robert F. Maguire, Portland Oregon
Board of Governors, 9th Judicial Circuit

PROGRAM

9:30 A.M. to 12:30 P.M.

1. Survey of State Bar Organizations Represented.
2. Unauthorized Practice.
3. "Lawyers in Defense of Democracy"—William C. Mathes, Member of Special Committee of American Bar Association on National Defense.
4. Full-time Executive Secretary for State Bar Associations:
 - a) Central office service
 - b) Bar Journal
 - c) Taxation School
 - d) Brief Exchange
5. Community Law Libraries.
6. Regional Conferences for State Associations.
7. New Activities.

LUNCHEON:

Address—"Judicial Administration"—Hon. John J. Parker, Charlotte, North Carolina, Justice of the Circuit Court of Appeals, 4th Judicial Circuit.

2:30 P.M. to 4:30 P.M.

8. Post Admission Legal Education; "District" Legal Institutes.
9. Integration.
10. "Responsibility of the Bar in a Changing World"—Hon. Jacob M. Lashly, President American Bar Association.
11. Judicial Selection and Tenure.
12. "Section System" in Association Work.
13. "American Citizenship"—Arthur Brouillet, San Francisco, Member of National Committee.
14. Law Office Organization.

**REGIONAL CONFERENCE OF JUNIOR BAR
EXECUTIVES OF AMERICAN BAR ASSOCIATION
TO HOLD MEETING AT SAME TIME**

It has always been the policy of the Junior Bar Conference of the American Bar Association to sponsor and conduct regional meetings of Junior Bar executives in conjunction with the regular regional conferences. Such a meeting of representatives from California, Arizona and Nevada is scheduled for the morning of February 20 at the Biltmore Hotel. This will be entirely separate from the other conference and the junior executives will then convene with the regular conference in the afternoon.

Responsibility for arranging and conducting the junior meeting at Los Angeles is in the hands of Harold W. Schweitzer of Los Angeles, member of the Executive Council of the Junior Bar Conference, American Bar Association, for the 9th Judicial Circuit. Mr. Schweitzer states that the Vice-Chairman of the Junior Bar Conference, Mr. Phil H. Lewis of Topeka, Kansas, will be on hand for the meeting. It will be informal and of the "round table" type, limited to informal discussion of all matters pertaining to younger attorneys and their problems.

Probable discussion topics will include the part of younger lawyers in national defense and the problems peculiarly confronting them, and also organization and membership problems. An excellent attendance and pointed discussion is expected.

WHAT'S NEW AT THE LAW LIBRARY

By Thomas S. Dabagh, Librarian.

NEW QUARTERS. There is again considerable talk of new quarters for the Law Library. As yet, however, no specific plan has been submitted to the Board of Law Library Trustees. The Librarian is working closely with Mr. Joseph Smith, Chairman of the Los Angeles Bar Association Committee on Law Library Quarters, in developing policies and determining specifications for the consideration of the Board if and when a plan is submitted.

LAW BOOK PUBLICATION. A considerable increase in American law book output is reported for 1940 by Publishers Weekly. The record shows 141 new titles, and 61 new editions of existing titles. This compares with 138 and 25 items, respectively, for 1939. The average total annual production from 1920 to 1939 was 120 items.

BILL OF RIGHTS. The Library has succeeded in securing a photograph of the manuscript copy of the resolution proposing the Bill of Rights amendments to the Constitution of the United States. This makes the third document-copy of our fundamental laws to be acquired by the Library for framing, copies of the manuscript Constitution and Declaration of Independence having been secured recently for this collection.

NEW BOOKS

ADMIRALTY. The sixth edition of Benedict incorporates recent developments in this field. The set will be complete in seven volumes.

AUTOBIOGRAPHY. Williston's Law and Life is proving quite popular. Smith's Saga of Texas Law offers recollections and comments by an East Texas lawyer, covering the interesting period of development of that part of the State.

AUTOMOBILES. Canadian automobile accident negligence law is presented in Hall's Digest of Cases.

CONSTITUTIONAL LAW. Complementary works on the relation of the executive to the legislative and judicial branches merit mention this month. Corwin's The President is a study in American constitutional law, reviewing both practice and legal opinions. Keith's The Constitution of England gives an account of the evolution of the prime minister's powers, involving a shift of authority from Parliament and the courts to the executive.

DRAFT LAW. A convenient compilation of the selective service laws and regulations, with helpful notes, is available in the Conscription Manual, by Peterson and Stewart.

CORONERS. Boys on Coroners, 5th edition, presents an up-to-date account of the rights and liabilities of coroners, the typical crimes they have to investigate, and the evidence of importance to the establishment of a case. Although limited to Canadian law, the volume has value for American practice as well.

ESSAYS. The Dallas Bar Speaks, 1939, continues a series recently established. The present volume contains some two dozen talks on miscellaneous subjects relating to the practice of the law.

FEDERAL PROCEDURE. Holtzoff and Crozier's Federal Procedural Forms is an annotated collection of the forms ordinarily useful, with information intended to help in adapting them to particular needs. Forms for appeals from administrative bodies are included.

JURISPRUDENCE. The Storrs Lectures at Yale for 1940, are published under the title "Law as Logic and Experience." The lectures, by Max Radin, have as a text Holmes' remark that "The life of the law has not been logic; it has been experience." Radin concludes that law can dispense with neither.

LABOR LAW. Rosenfarb's *The National Labor Policy and How It Works* is a review of the history of governmental intervention in labor disputes, and of operations under the NLRA.

LAW ENFORCEMENT. *Police Systems in the United States*, by Bruce Smith, describes city, rural, state and federal law enforcement by police agencies. The need for united action in emergencies is pointed out.

NEUTRALITY. *American Neutrality: Trial and Failure*, by Fenwick, relates our attempt to stand by what the author calls "an inherently illogical system" or principle of international law.

NEWSPAPERS. *Contempts by Publication*, by Sullivan, discusses the law of "trial by newspaper".

PROBATE LAW. An important phase of the New York law of descent is extensively developed in Beechler's *Elections Against Wills*, while the 18th edition of Tristram and Coote's *Probate Practice* presents a full account of the English law on the subject, including trust corporations.

TRUSTS. The question of what law governs the construction, administration and taxation of trusts, both testamentary and inter vivos, is considered in Land's *Trusts in the Conflict of Laws*.

The practical guide for trustees, Loring's *Trustee's Handbook*, is now offered in a 5th edition, by Shattuck.



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JUNIOR BARRISTERS CONCLUDE SUCCESSFUL YEAR

ON January 21, 1941, the Junior Barristers brought to a close their thirteenth year of activity, and at the annual meeting, elected as the officers for the year 1941:

Whitney R. Harris, Chairman;
Francis J. McEntee, 1st Vice-Chairman;
Charles C. Stanley, Jr., 2nd Vice-Chairman;
Gordon Files, Secretary-Treasurer.

The report of retiring Chairman Harold W. Schweitzer, sets forth the numerous activities undertaken during the past year. A questionnaire was submitted to each member of the Junior Barristers at the first of the year, attempting to gather information as to the interests, activities and background of each member. A request was made for suggestions as to the program and also for constructive criticism pertaining to the organization. Many valuable suggestions were made, and much information was gathered, but the officers were very disappointed to receive only sixty-eight answers out of the total of approximately two hundred questionnaires submitted to the membership.

Complaints had been made that many members were not allowed to participate in the activities and that their voices were not heard in the affairs. This questionnaire was submitted to each member as a result of this situation, and it appeared therefor that because of the failure to obtain a larger response, the complainants lacked sincerity, and the criticism was not justified. Each man who responded to the questionnaire was given an opportunity to participate in the activities designated by himself and his suggestions received proper attention.

The Chairman's report continues as follows:

"Seventeen standing committees were appointed, and five special committees were selected to deal with unanticipated situations. Each man who participated in the activities of these committees, realized much in the way of fellowship and enjoyment, increasing his personal acquaintanceship, and rendering to the community valuable service.

PUBLIC RELATIONS AND SERVICE

"1. PUBLIC INFORMATION PROGRAM.—The Public Information Program was divided into two sections, the Speakers Bureau (Francis J. McEntee, Chairman), and the Radio Section (Gordon L. Files, Chairman). These men were instructed to present material dealing with American citizenship, administration of justice, juvenile crime prevention, and other related non-controversial subjects. The public-speaking section approached the schools, women's clubs, etc., and throughout the year delivered numerous talks within the scope of the program.

The Radio Section conducted a weekly radio program over station KFAC, Los Angeles. One of the features presented by the Radio Section was a series of

weekly radio broadcasts entitled "The Lawyer's Storybook." The legal profession can not prevent writers, motion picture producers and radio dramatists from repeatedly portraying lawyers in unflattering roles, but here the Junior Barristers sought to counter this situation by giving to the public a few stories in which the lawyer is not the villain but the hero of the tale. The stories used were not limited to any particular type or style; they gave the colorful background of cases of historic importance, like the Dartmouth College case or the trial of Peter Zenger. Other stories were told about indigent persons in Los Angeles who were able to obtain justice in the processes of our courts. The limitation imposed upon all subject matter was that the story must be interesting to the layman and based upon facts showing the lawyer and the judge executing his task as it should be done.

"Both the radio and platform speaking sections of the Public Information Program cooperated with the Public Information Section of the Junior Bar Conference of the American Bar Association, and received much material and conveyed information to the national agencies.

"2. LEGAL AID COMMITTEE.—(Lewis T. Sterry, Chairman, and Paul W. Beidler, Vice-Chairman.) Again this year, the Junior Barristers furnished the man-power for the Los Angeles Legal Aid Clinic, averaging at least one man each day. The Junior Barristers who served at the Clinic received valuable experience in the draftsmanship of pleadings, the interviewing of clients and witnesses, and in the trial of cases.

"3. EDUCATIONAL INFORMATION COMMITTEE.—(Richard H. Forster, Chairman). As a close ally of the Public Information Committee, the Educational Information Committee was conceived this year for the purpose of going into the high schools and colleges, there furnishing young attorneys to serve as counsellors and advisors for the students who contemplated the study of law. Vocational guidance was the task of the members of this committee, and members of the committee were received in a number of the city high schools where round-table discussions were held with the prospective law students. Since this work was new this year, only the basic foundation for a great service has been laid.

"4. EMPLOYMENT AND PLACEMENT BUREAU.—(Hilton McCabe, Chairman).—The Employment and Placement Bureau was organized primarily to assist the young attorney in connection with his employment, however, we feel that at the same time, the work should be considered as a public service. 295 persons made application for placement. The applications were received at the Los Angeles Bar Association office and were then transferred to the section of the committee charged with personal interviews of the applicants. Although the number placed was not large, it is believed that the service is valuable and should be continued. Surveys were made in the fields of possible employment and prospective employers should now look to the Bar Association office for potential employees who have had legal training. Our task in the future,

besides the acceptance of applications, will be the publicizing of the Bureau for the benefit of possible employers.

"Several special committees were created and operated during the year. Amongst these were the Coordination Committee (Charles C. Stanley, Jr., Chairman), and the Committee to Assist the Senior Bar (Hampton Hutton, Chairman). The former committee coordinated our activities with other Junior Bar Sections, notably the Junior Bar Conference of the State Bar of California and the Junior Bar Conference of the American Bar Association. The latter committee stood in readiness to assist the Los Angeles Bar Association office if and when special demands were made on that office. During each judicial campaign, this committee assisted with the judicial plebiscite taken of all members of the Los Angeles County Bar.

MEMBERSHIP ACTIVITIES

"1. SOCIAL EVENTS AND CALENDAR COMMITTEE.—(William J. Lane, Chairman). This committee was created to outline a program of social activities throughout the year, and endeavor to have at least one such activity during each of the months. Its recommendations for the activities and dates were then transmitted to the Activities Committee.

"2. SOCIAL ACTIVITIES COMMITTEE.—(Stanley M. Gleis, Chairman). Amongst the activities arranged by this committee, were several stag barbecues and smokers, a Clerk's Night, to which all of the clerks of the various courts were invited, a Doctors'-Lawyers' Night, at which we joined with the Young Doctors' Committee of the Los Angeles County Medical Association, and a Spring Frolic. The Spring Frolic was held at the Brentwood Country Club. Some 140 persons attended and enjoyed an afternoon and evening of competitive sports, entertainment, and fellowship.

"3. LAW LECTURE COMMITTEE.—(Whitney R. Harris, Chairman).—During the summer months, without charge the following law lecture course was presented by the Junior Barristers:

Herbert Freston.....	"The Lawyer and His Client."
Allen W. Ashburn.....	"The preparation of a Lawsuit."
Hubert T. Morrow.....	"The Trial of a Lawsuit."
Kurtz Kauffman.....	"After Judgment, What?"
Hon. Louis W. Myers.....	"Appellate Procedure."

"4. PUBLICITY COMMITTEE.—(C. Hudson B. Cox, Chairman).—A liberal amount of publicity in the local legal papers in behalf of the members of the Junior Barristers' committees proved to be a stimulant of interest in activities. The committee also furnished in each issue of the monthly magazine of the Los Angeles Bar Association, information concerning the activities of the Junior Barristers.

"5. MEMBERSHIP COMMITTEE.—(John W. Luhring, Chairman).—Congratulatory letters were mailed to each new admittee to the Bar and each was invited to join our membership. Each new member of the Association received a personal letter from the Chairman, and was invited to participate in the Junior Barrister program. The work of this committee was supplemented by that of the Reception Committee (Emmet H. Wilson, Jr., Chairman), which sought to receive the new members at the social functions, introducing them and explaining our organization.

"6. BAR BULLETIN COMMITTEE.—(Leslie C. Tupper, Chairman).—This committee assisted Ewell D. Moore, Editor of the Los Angeles Bar Bulletin,

and besides preparing numerous articles, aided in the collection of material and advertisements. It was solely responsible for the January, 1941, issue which was dedicated to the Supreme Court of the State of California, presenting a history of the Court, giving biographical data of many of the outstanding justices, including each one of the present members of the Court.

"The plans and arrangements for the January meeting of the Los Angeles Bar Association meeting was in the hands of the Junior Barristers. Chief Justice Phil S. Gibson of the California Supreme Court, was obtained as the guest speaker, and the entire membership of the Supreme Court was present at the speakers' table. Each of the new admittees to the California State Bar, resident in Los Angeles County (190), received a personal invitation to attend this meeting. 129 of the new admittees were present; 368 persons attended the dinner, and because of inadequate facilities, many who had not made reservations, were unable to be accommodated.

"The retiring officers of the Junior Barristers are Harold W. Schweitzer, Chairman, T. H. Sword, First Vice-Chairman, Hilton H. McCabe, Second Vice-Chairman, and Stanley Jewell, Secretary-Treasurer. These officers received many complimentary statements about the activities of the Junior Barristers this past year, and they use this opportunity to express their appreciation to each member who participated in the program and believe that the success of the past year's program was due to the coordinated efforts and enthusiasm of each individual member."

WOMEN'S JUNIOR COMMITTEE OFFICERS

At a recent meeting of the Women's Junior Committee of the Los Angeles Bar Association, the following officers were elected for the ensuing year:

Mary McCarroll, Chairman;
 Louise Mason, First Vice-Chairman;
 Gizella Loshoncy, Second Vice-Chairman;
 Katherine Stoll, Secretary.

In keeping with the by-laws of the Association, the Board of Trustees at its meeting on February 13th, approved the new officers of the Women's Committee.

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REPORT OF COMMITTEE ON MUNICIPAL COURT REPORTERS EXAMINATION

THE Los Angeles Bar Association Committee for the examination of applicants for appointment as Court Reporters in the Municipal Court, has submitted an interesting report of its work during 1940, which shows the vast amount of time and attention given to the task and the results obtained. The Committee consisted of Forrest A. Betts, chairman; Philip C. Sterry and Oscar O. Collins.

Forty applicants took the examination and fifteen were approved. The report says in part:

"During the year 1939, for the first time in a number of years, it became necessary to appoint a committee for the purpose of conducting an examination for Court Reporters. In the Municipal Court this is regulated by the provisions of the law by virtue of which the examination is made by the committee for the Los Angeles Bar Association. There appears to have been little by way of a permanent record, to which we could refer as a guide to the best manner in which to prepare for, and give, such examination. It would appear that, previous to this time, the groups which had applied for the privilege of taking the examination have been small, and the instructions with reference to the examination, and the manner of giving it, were based upon that premise.

* * * * *

"As the President of the Association, you very kindly permitted the committee to continue its work for another year, in order that we might make an effort to avoid the pitfalls of the year before, and might establish and record a plan of operation which would take care of present time conditions, and permit subsequent committees to accomplish better results than we have accomplished, without suffering some of the headaches which the original committee did suffer.

"A number of conferences were had with the Committee of Judges from the Municipal Court, and also with specially chosen court reporters of known ability. We refer specifically to N. C. McKnight, P. S. Noon, and Walter M. Pratt. There is filed with your committee, and with the committee from the Municipal Court Judges, a copy of the plan of operations suggested by the reporters. For the purpose of having your records complete, the committee, by carbon copy of this letter, turns over to Mr. Elkins, for permanent keeping, the document wherein this plan is set out. We think that, if such plan as is suggested in Mr. McKnight's review can eventually be established, it will be extremely helpful towards raising the qualifications of court reporters, and toward furnishing a continuously available "Official List." However, by the time this plan was ready for consideration it was apparent that it could not be put into operation in time to provide for the present urgent requirement for additional Official Reporters in the Municipal Court. Therefore, we determined that some other plan would have to be followed.

"It was determined by your committee that it was advisable not to have a number of different people going through the process of trying a case from a

script in a moot court proceeding, because this plan had proven extremely unsatisfactory in the original examination. On the contrary, we agreed that the acceptable plan was to have a given transcript, with words counted out in groups of 150 consecutively so that 3,000 words could be read in a space of 20 minutes. It was believed by us that, under test conditions, the reporter who could pass twenty minutes of continuous dictation at 150 words per minute would prove to have the qualifications necessary for good court reporting. This plan was consummated by securing copies of old "Transcripts on Appeal." Thus, a question and answer script was provided, and sufficient copies were available to permit members of the committee, and others appointed for that purpose, to check on the "reader," it being apparent that, probably, few could, or would, read a 3,000 word article exactly according to the script.

"Having determined to hold the examination in this manner, new announcements were sent out and published in the paper, and we agreed that not more than 18 to 20 persons would be examined at one time. Arrangements were made to take two classes the first Saturday morning, with the proviso that we would take at least one class the second Saturday morning, and two if necessary. This plan worked out extremely well, and it was only necessary to take one class on the second Saturday. A total of 42 applicants took the examination, which was given in Division 5 of the Municipal Court, on the 7th floor of the Hall of Justice. The members of the Municipal Court Committee and the members

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of your committee were present at these examinations, and participated in the giving of them. After the examination had been completed Mr. Kenneth Holaday, Secretary to the Presiding Judge and Jury Commissioner, conducted the task of checking off the papers against the transcripts of those officially appointed to check against the dictation as given from the bench. When these transcripts had been thus marked, they were turned over to your committee for further examination and grading.

"We have graded each of the papers which was turned in after the completion of the examination. (Some parties taking the examination did not turn in papers.) In accordance with the suggestion of the court reporters, based upon the experience of the National Court Reporters Association, a period of five hours was given for the transcription of these papers immediately following the examination in court room designated by Mr. Holaday. This was for the purpose of permitting reporters who customarily transcribe their notes by talking machines, rather than by their own typing, to transcribe the examination by longhand if necessary. The committee, upon its examination of the papers, endeavored to make due allowance for the pressure that is naturally incident to a test condition, and for the fact that many reporters do not customarily transcribe their own notes. As a result of our grading of these papers fifteen applicants have been approved by us, and the approval thereof and certificates therefor, in each case have been sent to the Municipal Court Committee.

"Often, in the giving of an examination of this sort, those who are unsuccessful are extremely disgruntled, and have literally a thousand reasons why they should have "gotten by," and why the examination was not "as it should have been." We experienced this particularly in connection with the original examination in 1939, which we admit was not the best. However, there is only one way in which these matters can be handled and that is draw the line where it should be, regardless of the results. Therefore, to avoid any bickering, the committee has established a rule that the transcripts, handed in by those candidates who are ruled not to have passed, are to be destroyed. This saves an infinite amount of difficulty.

"We would like to report, while on this subject, that every transcript which was ruled as "not passing" was examined by the members of your committee at least three times, and those which were on the borderline, but were turned down, were examined four times. It was the desire of the committee that no candidate should be refused approval if approval could in anywise legitimately be given. In grading the corrections—where the number thereof was not too great, there were no discredits merely because of incorrect transcriptions, provided the errors did not change the meaning of the text. For example, one candidate consistently contracted the words "I am" to "I'm." A number of other similar corrections existed in the papers of those even who were passed. Some reporters whom we have found to be good in practice (taking depositions) failed. We take this to indicate the desired severity of the test. This statement might be misunderstood if we did not at this time indicate to you that we did not advise ourselves

of the names of the candidates, in either the successful or unsuccessful group, until the papers had been examined and our opinion thereon determined. In evidence of this, your committee was entirely unaware, until the time of its oral examination of the candidates, of the fact that of the fourteen who passed ten were machine operators.

"We requested oral examination so as to be sure that the applicants were not merely taking this examination so as to be known as "court reporters". As a matter of fact, we passed a sufficient number from the examination in 1939 to furnish the court with all of the reporters it would need, provided they all were subject to call. We endeavored to impress, rather forcibly, upon the applicants this time, the fact that they would be expected to respond to call. We also discussed individually with the applicants the problems to be presented to them as reporters, such as those of being sure that they hear all of the persons who are talking, including the judge—the necessity of stopping the proceedings, if necessary, to accomplish that end. We feel that this oral examination or interview, as it should be more properly called, is an addition to the written examination which should eventually prove profitable to the court in securing sufficient reporters to cover their needs."

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BAR ASSOCIATION LAW INSTITUTE LECTURES

ONE of the most successful lecture series in the history of the Los Angeles Bar Association is now being conducted on Tuesday nights in the Auditorium of the Edison Building under the chairmanship of Harry J. McClean of the Committee on Education and Public Information. Outstanding lectures have been given by David Tannenbaum on Death and Succession Taxes With Special Reference to Life Insurance Benefits, and by Joseph Brady on the Excess Profits Tax Act of 1940. Subsequent lectures will be as follows:

February 25 and March 4—Alvin P. Jacobs

“Federal and State Gift Taxation and Their Practical Importance”.

March 11 and March 18—Julius Patrosso

“Preparation of Leases and Some Practical Problems of Landlord and Tenant”.

April 8, 15, 22 and 29—Professor Wm. Burby

“Problems and Trends in Community Property Law”.

May 6 and 13—Walter Nossaman

“Recent Decisions and Important Trends in the Law of Trusts and Powers”.

The Committee reports a highly gratifying enrollment of 125. Due to the large capacity of the hall, there are still some seats available for those who wish to attend the balance of the series. The admission price for the entire course has been set at \$12.00 for members of the Association and \$15.00 for others. Admission to single lectures is \$1.50 for members and \$2.00 for others. An innovation adopted this year is that season tickets have been made transferable.

Printed syllabi outlining the subject matter of the lectures are distributed to all persons who attend.

RESOLUTION BOARD OF TRUSTEES LOS ANGELES BAR ASSOCIATION

WHEREAS, many law students graduating in 1941 may be inducted into the military service prior to the next regularly scheduled State Bar examination in October; and

WHEREAS, such induction, prior to taking such examination, will result in a great hardship to such students;

Now, THEREFOR, BE IT RESOLVED that the Board of Trustees of the Los Angeles Bar Association call upon the Board of Governors of the State Bar to either (a) provide an examination for applicants within the draft age in mid-summer, on such date as will permit reasonable time for review following graduation from law school, and request proper military authorities to defer induction of such applicants until after completion of such examination, or (b) request of the proper military authorities deferment of induction of such applicants until after completion of the regularly scheduled examination in October.

THE ARGUMENT OF AN APPEAL*

By Hon. John W. Davis, of the New York City Bar

IF A LECTURE on the well worn subject assigned to me is to be given in this series, no one knows better than the Chairman of your Committee on Post-Admission Legal Education that he and not I should be the person to give it. This is true in the first place because of the fact that in his lecture on Summary Judgment he has given the perfect example of what these lectures ought to be—informative, scholarly, helpful—and has set a standard which it is unfair to ask others to rival. And in the second place a discourse on the argument of an appeal would come with superior force from a judge who is in his judicial person the target and the trier of the argument than from a random archer like myself. Or, supposing fishes had the gift of speech, who would listen to a fishermans' weary discourse on flycasting, the shape and color of the fly, the size of the tackle, the length of the line, the merit of different rod makers and all the other tiresome stuff that fishermen talk about, if the fish himself could be induced to give his views on the most effective methods of approach. For after all it is the fish that the angler is after and all his recondite learning is but the hopeful means to that end.

*Address delivered before the Association of the Bar of the City of New York.
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I hope I may not be charged with levity or disrespect in adopting this piscatorial figure. I do not suggest any analogies between our reverent masters on the Bench and the finny tribe. God forbid! Let such conceits tempt the less respectful. Yet it is true, is it not, that in the argument of an appeal the advocate is angling, consciously and deliberately angling, for the judicial mind. Whatever tends to attract judicial favor to the advocate's claim is useful. Whatever repels it is useless or worse. The whole art of the advocate consists in choosing the one and avoiding the other. Why otherwise have argument at all?

I pause for definition. Argument, of course, may be written as well as oral, and under our modern American practice written argument has certainly become the most extended if not always the weightier of the two. As our colleague, Joseph H. Choate, Jr., recently remarked, "we have now reached the point where we file our arguments in writing and deliver our briefs orally." But it was not always so and in certain jurisdictions it is not so today. In England, for instance, where many, perhaps most cases are decided as soon as the argument is closed, counsel are not expected to speak with one strabismic eye upon the clock and the other on the court. * * *

The argument of an appeal, whether by voice or pen, is hedged about today by strict limitations of time and an increasing effort to provoke an economy of space. The rules of nearly every court give notice that there is a limit to what the judicial ear or the judicial eye is prepared to absorb. Sometimes the judges plead, sometimes they deplore, sometimes they command. The bar is continuously besought to speak with an eye on the clock and to write with a cramped pen.

Observing this duty of condensation and selection I propose to direct my remarks primarily to the oral argument. I begin after the briefs have all been filed; timely filed of course, for in this matter lawyers are never, hardly ever, belated. I shall assume that these briefs are models of brevity, are properly indexed, and march with orderly logic from point to point; not too little nor yet too much on any topic, even though in a painful last moment of proof-reading many an appealing paragraph has been offered as a reluctant sacrifice on the altar of condensation.

I assume also that the briefs are not overladen with long quotations from the reported opinions, no matter how pat they seem; nor over-crowded with citations designed it would seem to certify to the industry of the brief-maker rather than to fortify the argument. A horrible example of this latter fault crossed my desk within the month in a brief which, in addition to many statutes and text writers, cited by volume and page no less than 304 decided cases; a number calculated to discourage if not disgust the most industrious judge.

I assume further that they are not defaced by *supras* or *infras* or by a multiplicity of footnotes which, save in the rare case where they are needed to elucidate the text, do nothing but distract the attention of the reader and interrupt the

flow of reasoning. And I remark in passing that these are no more laudable in a judge's opinion than they are in a lawyer's brief.

I assume that there is not a pestilent "and/or" to be found in the brief from cover to cover; or if there is, that the court, jealous of our mother-tongue, will stamp upon the base intruder.

And finally I assume as of course that there has been no cheap effort to use variety in type to supply the emphasis that well constructed sentences should furnish for themselves. It may be taken as axiomatic that even judges, when they are so disposed, can read understandably; and I should think that where the pages of a brief begin conversationally in small pica, nudge the reader's elbow with repeated italics, rise to a higher pitch with whole paragraphs of the text—not mere headings—in black letter, and finally shout in full capitals (and such have been observed), the judge might well consider that what was a well intentioned effort to attract his attention was in reality a reflection on his intelligence. * * *

Professing no special fitness for the task, I have ventured to frame a decalogue by which such arguments should be governed. There is no mystical significance in the number ten, although it has respectable precedent; and those who think the number short and who wish to add to the roll when I have finished, have my full permission to do so.

At the head of the list I place, where it belongs, the cardinal rule of all, namely:

(1) Change places (in your imagination of course) with the Court.

Courts of appeal are not filled by Demigods. Some members are learned, some less so. Some are keen and perspicacious, some have more plodding minds. In short, they are men and lawyers much like the rest of us. That they are honest, impartial, ready and eager to reach a correct conclusion must always be taken for granted. You may rightfully expect and you do expect nothing but fair treatment at their hands.

Yet those who sit in solemn array before you, whatever their merit, know nothing whatever of the controversy that brings you to them, and are not stimulated to interest in it by any feeling of friendship or dislike to anyone concerned. They are not moved as perhaps an advocate may be by any hope of reward or fear of punishment. They are simply being called upon for action in their appointed sphere. They are anxiously waiting to be supplied with what Mr. Justice Holmes called the "implements of decision." These by your presence you profess yourself ready to furnish. If the places were reversed and you sat where they do, think what it is you would want first to know about the case. How and in what order would you want the story told? How would you want the skein unravelled? What would make easier your approach to the true solution? These are questions the advocate must unsparingly put to himself. This is what I mean by changing places with the Court. * * *

(2) State first the nature of the case and briefly its prior history.

Every Appellate Court has passing before it a long procession of cases that come from manifold and diverse fields of the law and human experience. Why not tell the Court at the outset to which of these fields its attention is about to be called? If the case involves the construction of a will, the settlement of a partnership, a constitutional question or whatever it may be, the judge is able as soon as the general topic is mentioned to call to his aid, consciously or unconsciously, his general knowledge and experience with that particular subject. It brings what is to follow into immediate focus. And then for the greater ease of the court in listening it is well to give at once the history of the case in so far as it bears on the court's jurisdiction. And sometimes there may be, I am not sure, a certain curiosity to know just whose judicial work it is that the court is called upon to review. For judges, like humbler men, judge each other as well as the law.

(3) State the facts.

If I were disposed to violate the rule I have previously announced against emphasis by typography, I would certainly employ at this point the largest capital type. For it cannot be too often emphasized that in an appellate court the statement of the facts is not merely a part of the argument, it is more often than not the argument itself. A case well stated is a case far more than half argued. Yet how many advocates fail to realize that the ignorance of the court concerning the facts in the case is complete, even where its knowledge of the law may adequately satisfy the proverbial presumption. The court wants above all things to learn what are the facts which give rise to the call upon its energies; for in many, probably in most, cases when the facts are clear there is no great trouble about the law. *Ex facto oritur jus*, and no court ever forgets it. * * *

Of course there are statements and statements. No two men probably would adopt an identical method of approach. Uniformity is impossible, probably undesirable. Safe guides, however, are to be found in the three C's—chronology, candor and clarity: Chronology, because that is the natural way of telling any story, stringing the events on the chain of time just as all human life itself proceeds; candor, the telling of the worst as well as the best, since the court has the right to expect it, and since any lack of candor, real or apparent, will wholly destroy the most careful argument; and clarity, because that is the supreme virtue in any effort to communicate thought from man to man. It admits of no substitute. * * *

(4) State next the applicable rules of law on which you rely.

If the statement of facts has been properly done the mind of the court will already have sensed the legal questions at issue, indeed they may have been hinted at as you proceed. These may be so elementary and well established that a mere allusion to them is sufficient. On the other hand, they may lie in the field of divided opinion where it is necessary to expound

them at greater length and to dwell on the underlying reasons that support one or the other view. It may be that in these days of what is apparently waning health on the part of our old friend *Stare Decisis*, one can rely less than heretofore upon the assertion that the case at bar is governed by such-and-such a case, volume and page. Even the shadow of a long succession of governing cases may not be adequate shelter. * * *

(5) Always "go to the jugular vein."

I do not know from what source I quote that phrase but it is of course familiar. Rufus Choate's expression was "the hub of the case." More often than not there is in every case a cardinal point around which lesser points revolve like planets around the sun, or even as dead moons around a planet; a central fortress which if strongly held will make the loss of all the outworks immaterial. * * *

(6) Rejoice when the Court asks questions.

And again I say unto you, rejoice! If the question does nothing more it gives you assurance that the court is not comatose and that you have awakened at least a vestigial interest. Moreover a question affords you your only chance to penetrate the mind of the court, unless you are an expert in face reading, and to dispel a doubt as soon as it arises. This you should be able to do if you know your case and have a sound position. If the question warrants a negative answer, do not fence with it but respond with a bold *thwurtutnay*—which for the benefit of the illiterate I may explain as a term used in ancient pleading to signify a downright No. While if the answer is in the affirmative or calls for a concession the Court will be equally gratified to have the matter promptly disposed of. If you value your argumentative life do not evade or shuffle or postpone, no matter how embarrassing the question may be or how much it interrupts the thread of your argument. Nothing I should think would be more irritating to an inquiring court than to have refuge taken in the familiar evasion "I am coming to that" and then to have the argument end with the promise unfulfilled. If you are really coming to it indicate what your answer will be when it is reached and never, never sit down until it is made.

Do not get into your head the idea that there is a deliberate design on the part of any judge to embarrass counsel by questions. His mind is seeking help, that is all, although it may well be that he calls for help before he really needs it. * * *

(7) Read sparingly and only from necessity.

The eye is the window of the mind, and the speaker does not live who can long hold the attention of any audience without looking it in the face. There is something about a sheet of paper interposed between speaker and listener that walls off the mind of the latter as if it were boiler-plate. It obstructs the passage of thought as the lead plate bars the X-rays.

Of course where the case turns upon the language of a statute or the terms of a written instrument it is necessary that it should be read, always, if possible, with a copy in the hands of the court so that the eye of the court may supplement its ear. But the reading of lengthy extracts from the briefs or from reported cases or long excerpts from the testimony can only be described as a sheer waste of time. With this every appellate court of my acquaintance agrees. A sentence here or a sentence there, perhaps, if sufficiently pertinent and pithy, but not I beg of you print by the paragraph or page. * * *

(8) Avoid personalities.

This is a hard saying, especially when one's feelings are ruffled by a lower court or by opposing counsel, but none the less it is worthy of all acceptance, both in oral argument and in brief. I am not speaking merely of the laws of courtesy that must always govern an honorable profession, but rather of the sheer inutility of personalities as a method of argument in a judicial forum. Nor am I excluding proper comment on things that deserve reprobation. I am thinking psychologically again. It is all a question of keeping the mind of the court on the issues in hand without distraction from without. * * *

(9) Know your record from cover to cover.

This commandment might properly have headed the list for it is the *sine qua non* of all effective argument. You have now reached a point in the litigation where you can no longer hope to supply the want of preparation by lucky accidents or mental agility. You will encounter no more unexpected surprises. You have your last chance to win for your client. It is clear therefore that the field tactics of the trial table will no longer serve and the time has come for major strategy based upon an accurate knowledge of all that has occurred. At any moment you may be called on to correct some misstatement of your adversary and at any moment you may confront a question from the Court which, if you are able to answer by an apt reference to the record or with a firm reliance on a well-furnished memory, will increase the confidence with which the Court will listen to what else you may have to say. Many an argument otherwise admirable has been destroyed because of counsel's inability to make just such a response.

(10) Sit down.

This is the tenth and last commandment. In preparing for argument you will no doubt have made an outline carefully measured by the time at your command. The notes of it which you should have jotted down lie before you on the reading desk. When you have run through this outline and are satisfied that the Court has fully grasped your contentions, what else is there left for you to do? You must be vain indeed to hope that by further speaking you can dragoon the Court into a prompt decision in your favor. The mere fact that you have an allotted time of one hour more or less does not constitute a contract with the Court to listen for that length of time. On the contrary,

when you round out your argument and sit down before your time has expired, a benevolent smile overspreads the faces on the bench and a sigh of relief and gratification arises from your brethren at the bar who have been impatiently waiting for the moment when the angel might again trouble the waters of the healing pool and permit them to step in.

TEMPORA MUTANTUR, ET NOS MUTANTUR IN ILLIS

A PROMINENT member of the local bar sends the following to THE BULLETIN: A friend of mine was going through some old legal papers and found a receipt dated 1854 for the sale of a negro woman. I made a copy of the receipt because it was very quaint and I am enclosing it herewith, with the thought that we might put it in the Bar Bulletin with an appropriate note that it was an authentic document.

Gainsville, Jany 11, 1854

Rec' of Edward Horace One Thousand Dollars in full payment for a Negro woman named Polly about twenty seven years old sound in mind and as sound in body as Negro women usually are of that age who do not have children, free from all incumbrances and a slave for life

John M. Soule.

STANFORD LAW CONFERENCE

AN INVITATION was extended today by the Stanford Law School to all practicing attorneys in California to attend a conference on office practice, to be held February 22, Washington's birthday, on the Stanford Campus.

The conference is open to alumni of other law schools as well as Stanford alumni and is without charge, but reservations should be made with Dean M. R. Kirkwood, Stanford University, as soon as possible.

Two Stanford lawyers, Francis Price of the firm of Heaney, Price & Postel, Santa Barbara, and Charles A. Beardsley, of the Oakland firm of Fitzgerald, Abbott & Beardsley, and two graduates of the University of Southern California Law School, Douglas L. Edmonds, associate justice of the Supreme Court of California, and Loyd Wright of Los Angeles, president of The State Bar, will be conference speakers.

BI-WEEKLY LUNCHEONS

A sub-committee of the Committee on Education and Public Information headed by Clyde Triplett has been conducting luncheons at the Los Angeles Athletic Club every two weeks featuring "bread and butter" talks by members of the Bar and various public officials with whom lawyers deal. No admission is charged except the price of the luncheon. Announcements of speakers and their subjects are published in the "Daily Journal" and the "Daily News".

JUNIOR BARRISTERS CONSIDER CALIFORNIA PHYSICIANS SERVICE

A COMMITTEE of the Los Angeles Junior Barristers has been in existence for sometime for the purpose of studying and considering the California Physicians Service.

The Service, more familiarly known as CPS, is an association of more than 5300 of the physicians of this state (which is most of the profession in California, and includes practically all of its most highly honored names) for the purposes of affording low cost medical care to persons in the lower income brackets. The high caliber of its professional membership is justly reflected by the reputation and integrity of its President, Dr. Ray Lyman Wilbur of Stanford University.

The CPS is not a clinic in any sense of the word. The beneficiary members in need of medical care are permitted to choose the professional members who shall treat them, and treatment and consultation is carried on in the same manner as in the ordinary doctor-private relationship.

The plan actually gives a beneficiary member full medical and surgical treatment by the physician of his choice, regardless of the amount needed, up to one year for each disease or injury; though there are, of course, certain necessary exclusions, such as mental disorders, alcoholism and pre-existing conditions.

The doctors fees are provided from a fund maintained by monthly payments of the beneficiary members, which are based on actuarial figures and which at present amount to \$1.70 per member for the complete medical and surgical service. This is the entire cost of the contract to a beneficiary member.

Under the present available actuarial figures, membership is necessarily limited to organizations and requires that a certain percentage of the membership of an organization join. However, the ultimate aim of this civic project is to bring its benefits to all individuals who need and want it.

The complete service is extended to the individuals of a member group who have a net income of \$3000.00 or less; and limited but valuable advantages are offered at the same price to persons with incomes in a higher bracket.

Hospitalization on a similar basis can be had in conjunction with CPS by all members, regardless of income, for an additional 80¢ per month. This is afforded through the Associated Hospital Service of Southern California, which includes most of the larger hospitals in the southland.

The plan has been briefly outlined in this article to acquaint the Bar with the existence of the project and to elicit communications from interested persons. The committee is engaged in weighing the merits and suitability of the plan for the membership of the Junior Barristers, and as one of the factors which will influence its decision wishes to learn whether or not the members themselves feel a want and need for such a plan. Comments of the Junior Lawyers are earnestly solicited, even though they do no more than express general interest. Such communications should be addressed to the committee chairman, Charles C. Stanley, Jr., 837 Van Nuys Building, Los Angeles, California. If the necessary approval is given, the plan will be more broadly presented and discussed in future articles or meetings.

It is of interest to note that the Barristers Club of San Francisco is one of the many California groups now holding CPS membership. This group, which is the San Francisco equivalent of our Junior Barristers, joined the CPS several months ago with sixty-three of its members participating.

Help! HELP!!

Help Your Association's Employment Office

You are urgently requested when in need of assistance to call upon the Association's employment office. The service is rendered without charge to either employer or employee. The office has on file a number of applications of men and women who are fully qualified.

Attorneys: There are a number of applications on file of attorneys who have recently been admitted, and a few experienced practitioners including the application of one attorney who has devoted approximately five years to trial work.

The office of the Association devotes considerable time to interviewing applicants for secretarial positions and when you use this service you are assured of securing a competent secretary of good appearance and personality. Salaries requested range from \$100.00 to \$150.00 per month.

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